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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/895,950	07/17/1997	ANDREAS WINTER	HOE-90/P-333	1558
23416	7590	02/10/2005	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899			TESKIN, FRED M	
			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

08/895,950

Applicant(s)

WINTER ET AL.

Examiner

Fred M Teskin

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 19-26 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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The finality of the Office action of October 20, 2003, is **withdrawn** and prosecution herein reopened so that new issues may be raised as detailed *infra*.

The amendment after final submitted on March 29, 2004, has been entered; however, the most recent supplemental declaration of record is dated February 13, 2004. A supplemental reissue declaration is required as per MPEP 1444 and 1414.01. Also, applicants have not stated in the latest declaration that every or all errors arose without deceptive intent.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claims 1-15 and 19-26 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

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The amendment filed March 29, 2004, proposes amendments to claim 1 that do not comply with 37 CFR 1.173(b), which sets forth the manner of making amendments in reissue applications. Specifically, the original patent claimed that "R<sup>3</sup> and R<sup>4</sup> are identical or different and are ..."; the phrase "are identical or different and are" has been deleted from claim 1 but is not enclosed in brackets (i.e., only "R<sup>3</sup> and" is bracketed and said phrase omitted from claim 1 as amended). Also, the word "is", inserted before "a hydrogen atom", does not appear in the original patent and therefore must be underlined. In addition, see column 16, line 22 of claim 1 wherein the patent claims "R<sup>11</sup> and R<sup>12</sup> or R<sup>11</sup> and R<sup>13</sup>" however in amended claim 1 parts of this phrase are unnecessarily underlined, namely "R<sup>12</sup>". Further, note that when a claim(s) is amended the notation "amended" or "twice amended", etc., must be listed following the number of the claim as per 37 CFR 1.173(b)(2).

Applicants are advised to ensure that all of the claims are in accordance with 37 CFR 1.173(b)(2) and are required to correctly amend the reissue application in the reply to this Office action.

Claim 19 is objected to because of the following informalities: the dash ("- -") appearing after "R<sup>12</sup>" (see the sixth line from the end of the claim) appears superfluous and should be deleted. Appropriate correction is required.

Applicants are notified that any subsequent amendment to the specification and/or claims must comply with 37 CFR 1.173(b).

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The previously indicated allowability of claims 1-15 and 19-26 over the prior art of record is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner F. M. Teskin whose telephone number is (571) 272-1116. The examiner can normally be reached on Monday through Thursday from 7:00 AM - 4:30 PM, and can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached on (571) 272-1114. The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FMTeskin/12-20-04

  
FRED TESKIN  
PRIMARY EXAMINER  
1713